

The Order of the Court is stated below:

Dated: November 21, 2019
02:53:21 PM

/s/ G MICHAEL WESTFALL
District Court Judge



Order prepared by:

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**IN THE FIFTH JUDICIAL DISTRICT COURT
IN AND FOR WASHINGTON COUNTY, STATE OF UTAH**

IN THE MATTER OF THE GENERAL
DETERMINATION OF RIGHTS TO THE
USE OF WATER, BOTH SURFACE AND
UNDERGROUND, WITHIN THE
DRAINAGE AREA OF THE VIRGIN
RIVER IN WASHINGTON, IRON, AND
KANE COUNTIES IN UTAH

**ORDER APPOINTING R.L. KNUTH AS
SPECIAL MASTER IN THE VIRGIN
RIVER ADJUDICATION**

AND

ORDER OF REFERENCE

General File

Civil No. 800507596

Judge G. Michael Westfall

This matter came before the Court on the Motion of the Utah State Engineer, through counsel, to appoint R.L. Knuth as Special Master in the Virgin River Adjudication, pursuant to U.R.C.P. 53. A hearing was held on the Motion on November 18, 2019 at 2 P.M. Counsel for the Utah State Engineer and Rick L. Knuth appeared before the court. No oppositions were filed and no party appeared in court to object to the motion.

Having reviewed the documents in support of the motion and considering the arguments,

the Court orders and directs that R.L. Knuth be appointed to serve as Special Master in the Virgin River Adjudication as more particularly detailed in this Order of Reference. The powers and duties of the Master shall be governed by U.R.C.P. 53 except where expressly modified by this Order of Reference, or as otherwise ordered by the Court.

I. Special Master's Duties

The Special Master's duties are limited to hearing objections to a List of Unclaimed Rights and objections to a Proposed Determination. The Master may not hear objections related to federal reserved water rights. Generally, the Master will preside over the adversarial proceedings between an objector, the State Engineer, and any affected parties. The Master will be expected to meet performance measures as set by this Order or the Court. In addition to the powers authorized under U.R.C.P. Rule 53(c), the Master is given the following duties and powers:

1. Actively managing objections filed in the Virgin River Adjudication, including: scheduling, notifying the parties, holding status and settlement conferences, and holding hearings.
2. Consistent with Utah Code of Judicial Conduct Rule 2.6, the Special Master may encourage the parties to settle matters in dispute. However, the Special Master shall not act in any manner that coerces a party into settlement, nor shall the Special Master, as the finder of fact, participate in compromise negotiations that would be inadmissible under Utah Rule of Evidence 408.
3. Designating objection proceedings within the general adjudication divisions or subdivisions and identifying the parties to each objection proceeding. For example, the

State Engineer and the objector will always be parties to each objection proceeding, but the Special Master shall also identify and give notice to other parties who may be affected by the adjudication of an objection as required by Utah Code § 73-4-13 and *Plain City Irrigation Co. v. Hooper Irrigation Co.*, 51 P.2d 1069 (Utah 1935).

4. Identifying the parties affected by a proposed settlement, and, following notice to the affected parties, hearing opposition to a proposed settlement.
5. Taking evidence, overseeing discovery, ruling on procedural motions, and ruling on substantive motions with a report and recommendation to the Court.
6. Preparing the Special Master's final report and recommendation for each objection proceeding containing findings of fact and conclusions of law. In preparing each report, the Special Master may solicit proposed findings of fact and conclusions of law from the parties to the objection proceeding.

II. Proceedings Before the Special Master

Proceedings before the Special Master shall be conducted pursuant to the Utah Rules of Civil Procedure and the Utah Rules of Evidence. Documents filed with the Court are deemed filed with the Special Master. The Master will arrange for the recording of all proceedings, and the parties may obtain transcripts as needed for objecting to or defending the Special Master's report and recommendation. Parties may request leave to appear telephonically at status or scheduling conferences, and the Special Master shall freely grant such leave for those proceedings. The Master may grant leave to appear telephonically at such other hearings or proceedings as may be appropriate, in the discretion of the Special Master. Because of the large number of parties in the general adjudication, the Special Master is not required to hold a

meeting with all parties within 21 days of the appointment as provided in U.R.C.P. 53(d)(1).

III. Special Master's Ethical Obligations and Ex Parte Communications

The Special Master shall be bound by the Utah Code of Judicial Conduct to the same extent as a Judge Pro Tempore, except the Special Master shall be bound at all times by Rules 1.2 and 2.4, and while serving as a Special Master, by Rule 3.13 of the Utah Code of Judicial Conduct. The Special Master shall not have *ex parte* communications with any party of the Court except to communicate with the parties or the Court on non-substantive or administrative matters.

IV. Special Master's Report to the District Court

After an objection proceeding is heard by the Special Master, the Master shall submit to the Court a report and recommendation with his decisions, findings, and conclusions pursuant to U.R.C.P. 53 and serve the report on all parties to the objection proceeding. Any party who has directly participated in the objection proceeding may file a written objection to the Special Master's report within 30 days of the filing of the Report. If objections to the Special Master's report are filed, parties to the objection proceeding may file written responses within 30 days. A party who has not directly participated in the objection proceeding may file an objection or respond to an objection to the Master's report only if the party can demonstrate by clear and convincing evidence that failure to participate was: (1) due to circumstances beyond the party's control, or (2) because the party could not have determined through the exercise of reasonable due diligence that the outcome of the case would affect the party's interests. The Court may enlarge the 30-day time period for filing objections to the Special Master's report and recommendation, or responses thereto, in a given objection proceeding only upon a showing of

extraordinary circumstances.

For any report and recommendation that receives an objection, the Court will accept the Special Master's findings of fact unless clearly erroneous as provided by U.R.C.P. 53(e)(2), and will review the Special Master's conclusions of law de novo.

V. Six Month Status Conference

Six months following the entry of this Order of Reference, the Court shall hold a status conference with the parties and the Special Master to assess the progress and status of the Special Master's work.

VI. Duration of the Special Master's Appointment and Compensation

The Special Master's appointment is contingent on continued legislative funding. Compensation for the Special Master may not be charged upon the parties, other than the State Engineer. The Special Master will be compensated at a rate of \$300 per hour; \$190 per hour for an associate attorney; and \$100 per hour for a paralegal. The Special Master may employ counsel of his choosing, subject to Court approval, to advise and assist him in carrying out his duties and under his supervision. Each month, the Special Master and his counsel shall submit their respective invoices to the Court and the State Engineer shall pay the amounts approved by the Court each month, statewide expenditures not to exceed of \$438,000 per state fiscal year.

END OF ORDER